UNITED STATES DISTRICT COURT  
NORTHERN for the NEW YORK

1 Michele Gray, M G: (minor)

2 Plaintiff(s),

3 -vs-

4 Amazon, Giokfine

5 Defendant(s).

6 CASE NO.

7 **COMPLAINT**8 1:20-cv-715  
MAD/DJS9  
10 **COMPLAINT**

11  
12 During the Covid-19 pandemic the local market were out  
13 of stock of tissue (toilet) paper so the Plaintiff  
14 purchase tissue (toilet) paper online on March 20, 2020  
15 from the Defendant (see attached receipt **exhibit 1**) The  
16 tissue paper was delivered April 23, 2020, (see **exhibit**  
17  
18 **2**). The Plaintiff rushed to Urgent Care the Troy Family  
19 Health Center (St. Peters Health Partner) at 79  
20 Vandenburg Place Troy, New York 12180 on June 23, 2010  
21 by MD Melissa Fiorini (see attached **exhibit 3**), a  
22 prescription from "MD Fiorini" for treatment (see  
23  
24 **exhibit 4**) the doctor checks the Plaintiff's urine test  
25 and discovered the Plaintiff has an infection in the  
26  
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1 Plaintiff's private area. The Plaintiff has a lump on  
2 the foreskin on the anal area that caused the Plaintiff  
3 to rush for care. Prior to the visit to doctor the  
4 Plaintiff was itching in the anal area for several  
5 weeks. The Plaintiff called the Defendant for the  
6 address of the company "Giokfine" due to the "Covid-19  
7 pandemic" no phones called are being answered, the  
8 Plaintiff sent email to the company asking for the  
9 address with no response (see attached **exhibit 5**).  
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12  
13 The Defendant states online that they are "committed to  
14 providing each customer the highest standard of  
15 customer service" The Plaintiff is unable to contact  
16 the company and "Amazon" hasn't answered the Plaintiff  
17 online as well. Furthermore, the defendant has very low  
18 consumer satisfaction status showing 75% of the  
19 customer aren't satisfied, with overall company and an  
20 89% negative review, (see **exhibit 6**)  
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23  
24 The Plaintiff claim Tort under the "Third  
25 Restatement of Torts" the influential treatise on the  
26 law of "product liability". A manufacturing defect  
27 occurred "the product departs from its intended design  
28

even though all possible care was exercised in the preparation and marketing of the product.

"*Product liability*" refers to a manufacturer or seller being held liable for placing a defective product into the hands of a consumer. Responsibility for a product defect that causes injury lies with all sellers of the product

Under *Product Liability, Negligence; Breach of Contract* (warranties involving the product's quality or fitness for use: express warranty, implied warranty of merchantability, and implied warranty of fitness for a particular purpose). These and other warranties are codified in the "*Uniform Commercial Code (UCC)*", which every state has adopted, at least in part) and *Strict Liability*, it is the responsibility of Defendants to deliver products free of defects that harm someone and to make good on that responsibility if the products are defective. The key feature of "*product liability law*" is that a person/Plaintiffs who suffers harm isn't attempted to prove negligence, but the negligence is presumed which result is "*strict liability*". The

1 Defendant is absolute responsibility as the seller,  
2 or/and distributor, and manufacturer, see *DeWayne  
3 Johnson v. Monsanto Company, et al, (N.D. Cal. 2016)*

4  
5  
6 The law has developed a doctrine known as "strict  
7 liability," that allows a person injured by a defective  
8 or unexpectedly dangerous product to recover  
9 compensation from the maker or seller of the product,  
10 without showing that the manufacturer or seller was  
11 actually "negligent". For these reasons (1) the  
12 consumer cannot be expected to prove whether the seller  
13 or renter of a product had a proper system for checking  
14 for manufacturer's defects, or whether the seller  
15 caused the defect after receiving the product from the  
16 manufacturer. (2) a consumer can't be expected to check  
17 each product before using it to see if it's defective  
18 or dangerous.

22  
23  
24 The Plaintiff claim for "Strict Liability" as  
25 applied to *Tort Law*, "*Third Restatement of Torts*" and  
26 *Amazon as a seller under "Second Restatement of Torts"*.  
27 *In tort law*, in the area of torts known as *products  
28 liability*, as *strict products liability* which the

1 defendant holds responsibility caused injury to the  
2 Plaintiffs, See *Brown v. Superior Court*, 44 Cal. 3d  
3 1049, 1056-57 (1988).

4  
5 The suffer "emotional distress" of "Mental Anguish"  
6 such as fright, terror, apprehension, nervousness,  
7 anxiety, worry, humiliation, mortification, feeling of  
8 lost dignity, embarrassment, grief, and shock,  
9  
10

11  
12 Under the Tort law, Title 28 U.S. Code § 2671 -  
13 Damages in tort claims to protects people from harms  
14 which result from the wrongful conduct of others, to  
15 property, and/also emotional or psychological harm as a  
16 distinct form of injury. This recognition was a result  
17 of a historical development, as society increasingly  
18 understood the severity and the long-lasting  
19 consequences of mental injury, (June 25, 1948, Ch. 646,  
20 62 Stat. 982.

21  
22  
23  
24 Title 15 U.S. Code § 6611(b) (5). Damages in tort  
25 claims is an under this traditional common law,  
26 Plaintiffs could sue for damages due to emotional  
27 distress for mental harms as recoverable of torts, as  
28

1 an additional harm if they also suffered physical  
2 injury or the threat of physical injury. Eventually,  
3 the courts recognized the infliction of psychological  
4 injury as its own independent cause of action, even  
5 without any accompanying harm to a person or property,  
6  
7 *W. Page Keeton et al., Prosser & Keeton on the Law of*  
8 *Torts* § 12, at 57 (5th ed. 1984), (Pub. L. 106-37,  
9 § 12, July 20, 1999, 113 Stat. 199.)

10  
11  
12 In the case, *Erie Insurance Co. v. Amazon.com*, No.  
13 18-1198 (4th Cir. 2019) The court explained that  
14 insofar as liability in Maryland for defective products  
15 falls on "sellers" and manufacturers (who are also  
16 sellers), it is imposed on owners of personal property  
17 who transfer title to purchasers of that property for a  
18 price. The "Fourth Circuit" also held that, although  
19 Amazon was not immune from suit under the  
20  
21 *Communications Decency Act*, 47 U.S.C. 230(c)(1), (June  
22 19, 1934, Ch. 652, title II, § 230, as added Pub. L.  
23 104-104, title V, § 509, Feb. 8, 1996, 110 Stat. 137.  
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1 In the case "Oberdorf vs Amazon" the plaintiff  
2 became permanently blind by a defective retractable  
3 leash. The plaintiff appealed her case and it was  
4 brought before the "Third Circuit". A surprising 2-1  
5 decision in July, a three-judge panel said "Amazon" was  
6 liable as a seller of products sold by third-party  
7 vendors, further state, The "Third Circuit" vacated and  
8 remanded, Amazon is a "seller" under section 402A of  
9 the "Second Restatement of Torts", Argued October 3,  
10 2018 "and Opinion filed: July 3, 2019, Oberdorf v.  
11 Amazon.com Inc, No. 18-1041 (3d Cir. 2019).  
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Judge Kevin McNulty federal district court in New Jersey referenced "Oberdorf" in a case where a boy was injured by a scooter brought on "Amazon" in 2015, the judge wrote, "Amazon's control of the product, its relationship with

the third-party sellers, and the structure of the "Amazon" marketplace all weigh in favor of finding that 'Amazon" was a seller, not a mere broker or facilitator".

1 Prior to the "Oberdorf" case Amazon felt sort to  
2 come to realization liability is coming when "Amazon"  
3 settled a case in 2014 where a 23-year-old Missouri man  
4 died after his helmet came off in a motorcycle accident  
5 purchased on "Amazon", for \$5,000, but admitted no  
6 liability.  
7

8

9 The Plaintiff mention "Amazon" didn't response with  
10 the "third-party seller" Giokfine's address, "Amazon"  
11 has a responsible to contact the consumer with basic  
12 information regarding their "third-party seller" and/or  
13 disassociate with companies that fall below a  
14 percentage of consumer review  
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19 Plaintiffs Defend Complaint  
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21 Under FRAP 27(b) that this court may act on a motion  
22 for a procedural or dispositive order— in this case,  
23 authorize its clerk to act on specified types of  
24 procedural motions. A party adversely affected by the  
25 courts, or the clerk's, action may file a motion to  
26 reconsider, vacate, or modify that action, a motion  
27 requesting that relief must be filed.  
28

1           The *U.S. Supreme Court* had defined when federal  
2 judges can dismiss as "*frivolous*" certain lawsuits  
3 brought by convicts and others who cannot afford to pay  
4 normal court costs. The court, in a *7-2 ruling*, said  
5 it is largely up to a federal judge to determine when a  
6 lawsuit is legally *frivolous* and thus need not be  
7 litigated.

8           The ruling reversed a decision of the *Ninth Circuit*  
9 *Court of Appeals*, which had said a federal judge could  
10 dismiss a lawsuit against the government as *frivolous*  
11 only if the allegations "*conflicted with judicially*  
12 *noticeable facts*."

13           The *Ninth Circuit* said, in effect, a judge could  
14 invoke the *frivolous* standard only if he had factual  
15 evidence that an allegation could not be true. The  
16 judges in this case can't prove the Plaintiffs  
17 complaint isn't true.

18           "A court is not bound, as it usually is when  
19 making a determination based solely on the pleadings,  
20 to accept without question the truth of the plaintiff's  
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1 allegations," justice Sandra O'Connor wrote for the  
2 court. While on this first glance, charges "must be  
3 weighted in favor of the plaintiff," judges are left  
4 largely to their common sense in deciding whether to  
5 dismiss a case, the court said. But O'Connor wrote such  
6 a complaint cannot be dismissed "simply because the  
7 court finds the plaintiff's allegations unlikely,"  
8 noting the "age-old insight that many allegations might  
9 be 'strange, but true.'"

12  
13       The ruling further defined the court's 1989  
14 *Neitzke v. Williams* ruling. The issue was important to  
15 prisoners because they often cannot afford the normal  
16 court filing fees. In a one-paragraph dissent, Justice  
17 *John Paul Stevens*, joined by *Justice Harry Blackmun*,  
18 wrote that while he agreed with the court's standard  
19 announced in this opinion, it is "entirely consistent"  
20 with the *Ninth Circuit's* ruling and Hernandez should be  
21 allowed to pursue his case. See *Denton v. Hernandez*,  
22  
23       S.Ct. \_\_\_\_ (1992).

26  
27       The *Constitution's Fifth Amendment* adamantly  
28 commands that no person may be "deprived of life,

1 liberty or property without due process of law" by any  
2 act of the federal government and legal proceedings  
3 carried out regularly and in accordance with  
4 established rules and principles called *procedural due*  
5 *process*. A basic threshold issue respecting whether due  
6 process is satisfied is whether the government conduct  
7 being examined is a part of a criminal or civil  
8 proceeding, see *Medina v. California* 505 U.S. 437, 443  
9 (1992), and having to litigant with full benefit of  
10 fair trial and the law applicable to all those in like  
11 condition, and not deprived of property without due  
12 process of law, even if regarded as deprived of  
13 property by an adverse result, see *Marchant v.*  
14 *Pennsylvania R.R.*, 153 U.S. 380, 386 (1894).

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*Under the Federal Regulation 5 CFR § 732.301 regarding*  
due process on decision made unfavorable decision, 5  
*CFR § 732.301(b) comply with all applicable*  
administrative due process requirements, as provided by  
law, rule, or regulation, 5 *CFR § 732.301(c (1) reason*  
for decision, 5 *CFR § 732.301(c (2 opportunity to*  
respond, 5 *CFR § 732.301(c (3) notice if appeal rights,*  
5 *CFR § 732.301 (d) consider*<sub>11</sub> all available information

1 in reaching its final decision, 5 CFR § 732.301(e) keep  
2 record of action, [56 FR 18654, Apr. 23, 1991, as  
3 amended at 66 FR 66711, Dec. 27, 2001]

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5  
6 *Carlton Fields v. Director of CDCR, et al vs U.S.*  
7 *District Court for Eastern California, Sacramento on*  
8 *04/09/2020 case reversed determined that Plaintiffs*  
9 *case wasn't frivolous and unable to state a claim*  
10 *dismissed*  
11  
12

13 U.S Supreme court has stated under Rule 12 (b) (6): "The  
14 issue is not whether a plaintiff will ultimately  
15 prevail but whether the claimant is entitled to offer  
16 evidence in support of the claim only appear to be the  
17 case but not definite" 416 US.232,236,236 (1974).

18 Rather, "a complaint should not be dismissed for  
19 failure to state a claim: *Conley v. Gibson*, 355 U.S.  
20 41, 45-46 (1975). "Dismissal without leave to amend is  
21 improper as if, no amendment can save the complaint"  
22 *Wright and Miller, Federal Practice and Procedure*, vol  
23 5A 1357.

18 Dated June 27, 2020

19 | EXHIBIT 1

amazon.com

## Final Details for Order #111-1856071-9717030

[Print this page for your records.](#)

Order Placed: March 20, 2020  
 Amazon.com order number: 111-1856071-9717030  
 Order Total: \$15.01

Shipped on March 24, 2020

Items Ordered	Price
1 of: <b>giokfine 10 Roll White Toilet Paper Toilet Roll Tissue Roll Pack of 10 4Ply Paper Towels Tissue</b> Sold by: <a href="#">giokfine</a> <small>(Seller profile)</small>	\$10.00
Condition: New	
<b>Shipping Address:</b>	
Makai Gray 165A VANDENBURGH PL A TROY, NY 12180-6048 United States	
<b>Shipping Speed:</b> Standard Shipping	
<b>Payment information</b>	
<b>Payment Method:</b> Visa   Last digits: 2013	
<b>Billing address</b> Michele Gray 25 West 132nd Street #8E New York, N.Y. 10037 United States	
<b>Credit Card transactions</b> <small>Visa ending in 2013: March 24, 2020:\$15.01</small>	

To view the status of your order, return to [Order Summary](#).[Conditions of Use](#) | [Privacy Notice](#) © 1996-2020, Amazon.com, Inc. or its affiliates

## EXHIBIT 2

amazon prime

All | Hello, makai | Account & Lists | Returns & Orders | Prime | Cart

Deliver to Makai  
Troy 12180

Whole Foods | Prime Video | Customer Service | Pantry | Browsing History | New Releases | Explore the Hobby Shop

Your Account > Your Orders > Order Details

**Order Details**

Ordered on March 20, 2020 Order# 111-1856071-9717030

[View or Print invoice](#)

**Shipping Address**  
Makai Gray  
165A VANDENBURGH PL A  
TROY, NY 12180-6048  
United States

**Payment Method**  
Visa \*\*\*\* 2013

**Order Summary**

Item(s) Subtotal:	\$10.00
Shipping & Handling:	\$3.90
Total before tax:	\$13.90
Estimated tax to be collected:	\$1.11
<b>Grand Total:</b>	<b>\$15.01</b>

[See tax and seller information](#)

**Transactions**

**Delivered Apr 23, 2020**

giokfine 10 Roll White Toilet Paper Toilet Roll Tissue Roll Pack of 10 4Ply Paper Towels  
 Tissue  
 Sold by: [giokfine](#)  
 \$10.00  
 Condition: New

[Buy it again](#)

[Return or replace items](#)

[Problem with order](#)

[Share gift receipt](#)

[Write a product review](#)

[Archive order](#)

## EXHIBIT 3

1  
2  
3 **Olin Callaghan**  
4 Physician Assistant  
5

**Troy Family Health Center**

*Operated by Samaritan Hospital*

6 79 Vandenburgh Avenue  
7 Troy, NY 12180  
8 TEL 518.271.0063  
FAX 518.271.0298



ST PETER'S HEALTH  
PARTNERS

[sphpma.com](http://sphpma.com)

10 **EXHIBIT 4**

11  
12 RITE AID-82 VANDENBURGH AVE  
13 83 VANDENBURGH AVE  
14 TROY, NY 12180-6024

(518) 272-1355

Store DEA : BR5272579

RPH : FQ1

15 Rx 10687 0595206

Date Filled : 06/23/2020

16 GRAY, MICHELE

(929) 318-5589

17 165A VANDENBURGH PL  
18 TROY, NY 12180

DAW : 0

19 CEFdinir 300 MG CAPSULE  
20 NDC : 16714-0391-02 QTY : 10  
21 FIORINI, MELISSA M MD  
22 79 VANDENBURGH AVE  
23 TROY, NY 12180  
24 NO REFILLS LEFT  
25 ADVANCEPCS MED D CVS/CRMARK (BIN#004336  
26 GRP: 788257 CLM REF#: 201754469307198999  
27  
28

29 DAYS SUPPLY : 5

30 U&C:

31 \$59.99

32 PHARMACY

33 **EXHIBIT 5**

5:10 PM Tue Jun 23

amazon.com

64%

SELLER  
giokfine  
[View Seller Profile](#)



PRODUCT  
giokfine 10 Roll White  
Toilet Paper Toilet Roll  
Tissue Roll Pack of 10 4Ply  
Paper Towels Tissue

ORDER PLACED  
March 20, 2020  
ORDER NUMBER  
111-1856071-  
9717030  
EXPECTED BY  
May 1, 2020 - May  
22, 2020

5 Other issue Change

6 What would you like to do?

Contact seller

Other issue ▾

7 Contact the seller and allow the seller two days to get back to you

8 I need your physical address

9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 3985 characters remaining

**Send**

## EXHIBIT 5A

Deliver to Makai  
Tracy 12180 Whole Foods Prime Video Customer Service Pantry Browsing History New Releases Shop The Big Style Sale

Your Account &gt; Your Orders &gt; Problem with order

## 17 Problem with order

SELLER  
giokfine  
[View Seller Profile](#)



PRODUCT  
giokfine 10 Roll White  
Toilet Paper Toilet Roll  
Tissue Roll Pack of 10 4Ply  
Paper Towels Tissue

ORDER PLACED  
March 20, 2020  
ORDER NUMBER  
111-1856071-  
9717030  
EXPECTED BY  
May 1, 2020 - May  
22, 2020

22 Message sent

If the seller does not resolve your issue within 48 hours of the first message, you can revisit this page to check if you are eligible to request an A-to-z Guarantee refund.

giokfine

giokfine storefront

★★★★★ 22% positive in the last 12 months (401 ratings)

giokfine is committed to providing each customer with the highest standard of customer service.

Have a question for giokfine?

Ask a question

Feedback

Returns &amp; Refunds

Shipping

Policies

Help

Products

*"Satisfied"*

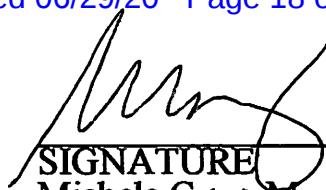
By Nancy on June 19, 2020.

*"This was ordered March 17th. I received an email June 16th simply stating it had been shipped, no tracking, no estimated arrival. No communication between March..."*[Read more](#)

By kalibeans on June 17, 2020.

*"Horrible. Dishonest. Terrible quality. Watch for this seller on an*

EXHIBIT 6



SIGNATURE

Michele Gray, M

{minor}

165A Vandenburg Place  
Troy, New York 12180

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